The Ottawa separate school case.

THE OTTAWA SEPARATE SCHOOL CASE

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A RESUMÉ OF THE OTTAWA SCHOOL QUESTION

BEING PART OF THE STATEMENT ISSUED BY THE ENGLISH TRUSTEES, APRIL 29, 1914.

The English Committee of the Separate School Trustees of the City of Ottawa, consisting of Trustees MacKell, Sims, Lanigan, Brennan, O'Neill, and Finn, deems it necessary, in view of the gravity of the present Ottawa Separate School crisis, to make the following statement to the Board of Trustees and to the Separate School supporters of Ottawa.

We hold that the whole history of the Separate Schools in Ottawa, since the Separate Schools Act was passed in 1863 till the present, proves:

First,—That two classes of schools have always existed here—the English and the French, or Bilingual.

Secondly,—That separation of some sort, so that the English would control the English schools and the French the Bilingual schools, has always existed more or less perfectly.

Thirdly,—That the greater the separation the more successfully the schools can be run.

COMMITTEES ESTABLISHED.

In 1886 the Ottawa school system was raised out of the chaotic state into which it had fallen, by having the principle of separation or autonomy, applied not merely to control but also to finance, the Board having been resolved into two practically independent committees.

The English schools having greater financial resources, the French, coveting this, destroyed unfortunately in 1903, the independent committees. Later they permitted them to be restored as regards control, but not as regards finance.

ELECTION PRINCIPLE.

The principle that there should be one English and one French trustee from each ward has been recognized since 1863, when the English controlled four of the five wards. This principle implies that the English trustees should be nominated and elected exclusively by English-speaking voters, and the French trustees exclusively by French-speaking electors. This principle was openly accepted in 1906 by the great leader of the French-Canadians, in school as well as religious and racial matters, the late Archbishop Duhamel. As far as the French trustees are concerned this principle is observed. There is not a French Trustee on the board who was not nominated by Frenchmen and elected by a majority of the French votes of his ward.

DISREGARD AGREEMENT.

On the other hand the French of this city, priests and people, relying on the weight of their numbers have decided to disregard this principle as far as English trustees are concerned. In the elections of April 25th, 1914, the two defeated English candidates had at least nine-tenths of the English votes. The French voters succeeded in electing two trustees not satisfactory to nine-tenths of the English-speaking ratepayers of these wards.

A FATAL POLICY.

This has intensified racial feeling tenfold and has driven a number of English supporters to the public schools. A policy which drives English Separate School supporters to the public schools is a fatal one. We now reiterate our claim, a claim which we have proved with great wealth of argument in our previous public statements to the press, that natural equity, business efficiency and civic peace require that the English Separate Schools and the Bilingual Separate Schools of this city should be under two mutually, functionally and financially independent boards or committees.

THE GOVERNMENT'S STAND.

We fail to see that the Ontario government has any reason to object to the formation in Ottawa of these mutually independent school boards or committees. We are not asking the government to create a new system of schools. We demand merely a new type of school board. It is unreasonable and impracticable to forcibly unite under joint management two fully developed sets of schools, different in language of instruction, different in curriculum, different in teachers' qualifications, different in inspectors. We have no objection to the French having their schools, but we do hold that they should pay for them. We object to a large part of our revenue going to their support, especially since we have great need of it ourselves.

OBJECT TO SYSTEM.

We object to the present system, which permits the French voters of this city, who have a set of schools more different from our English Separate Schools than are the Public Schools from the Separate Schools, to elect our trustees, to control our schools, and to spend our money. We maintain that, while temporary makeshifts may be found, the only satisfactory and permanent solution of the Ottawa Separate School difficulty is complete separation of the English Separate Schools and the Bilingual Separate Schools. The French of this city have rejected this perfectly fair proposition with scorn and insults. Perhaps some day they may realize that it is also their only salvation.

"FRENZIED FINANCE."

Meanwhile as long as we are forced to remain in partnership with the Bilingual trustees, we are bound to see that our partners do not ruin us. Unfortunately our partners have attempted and are attempting to ruin us, by their insurrectionist plan of campaign and frenzied finance.

INVOLVED WHOLE BOARD.

The Bilingual trustees by illegally defying a government regulation have involved the whole board in rebellion and have lost the government grant for 1913 as a first consequence. It is impossible to maintain a government system of schools in defiance of the government. The Separate Schools of Ontario form an integral part of the government schools of Ontario. They were established not to teach French, but to teach English to Catholics.

Concessions as regards the teaching of French have since been made both in the Public and Separate Schools, the regulations being identical for each. If the French desire greater concessions, there are constitutional means of obtaining them. But we do not intend to let the French ruin our Separate Schools, while they use militant tactics to obtain more French teaching.

APPEAL TO COURTS.

Meanwhile, since the government has not acted effectively, we have been forced to appeal to the courts. We are not going to allow the Bilingual promoters of a frenzied finance to squander the money of our electors. So we, the members of the English Committee of Trustees, in conjunction with the two defeated English candidates of St. George's and Dalhousie wards, have applied for an injunction to prevent the issue of debentures and for a mandamus to force the Bilingual trustees to obey the law.

In view of the lack of credit of the Ottawa Separate School Board owing to its defiance of the government and loss of the government grant, in view of the stringency in the money market, enormous liabilities and high school rate of the Separate Schools, in view of all this, to issue debentures for $275,000 or $350,000 would be simply frenzied finance; and as it is intended to use about half of this money to build schools which will be conducted in defiance of the government, it would be simply misappropriating public funds. We believe that by means of the courts we shall be able to defend the interests of our electors.

OTTAWA, April 29th, 1914.

MEMORANDUM OF COUNSEL

IN THE MATTER OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF OTTAWA.

STATEMENT OF CASE OF SUPPORTERS OF ENGLISH SCHOOLS.

1. There are only two classes of Primary schools in Ontario—Public and Separate.

2. For the purposes of this memorandum, Separate Schools may be taken to mean Roman Catholic Separate Schools,— that is to say, *Separate Schools* established and maintained *for Members of the Roman Catholic Denomination, hence Denominational Schools.*

3. *English* is the *Official Language* of the Province of Ontario, and the recognition of any other language in the Primary schools, to the impairment of instruction in English and the detriment of these schools is an infringement upon the Constitutional rights of English-speaking supporters.

4. *Roman Catholic Separate Schools* established *at the Union* were, in law, *English Schools. No class of persons then had any right or privilege with respect to the use of any language other than English in these schools.*

5. The British North American Act, 1867, Section 93, provides as follows:

> In and for each Province the Legislature may exclusively make laws in relation to education subject and according to the following provisions:
>
> 1. Nothing in any such law shall prejudicially affect any right or privilege *with respect to Denominational Schools* which any class of persons have by law in the Province at the Union.

6. In the action of MacKell vs. The Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa, it was claimed by the Defendant Board that Regulations of the Department of Education limiting the use of the French language in the Primary Schools were *ultra vires,* and that the use of French both as a subject of study and as a medium of communication between teacher and pupil, could not be restricted or curtailed in as much as persons of that race were a class who at the Union enjoyed rights and privileges with respect to Denominational Schools, and Section 93 of the British North America Act was relied upon by the Defendant Board.

7. The Honourable Mr. Justice Lennox afforded the Defendant Board ample time and opportunity to establish the claim thus put forward on behalf of those of the French race. The Department of Education placed its records at the disposal of the Defendant Board. Every work of reference, historical work, letter, advice and document containing any reference to the question in issue was admitted in evidence by the learned Judge. On this Branch of the case His Lordship in delivering Judgment declared as follows:

> "I have not overlooked that it was shown, or attempted to be shown, by verbal testimony and records of the Department, that, prior to Confederation, in isolated instances here and there, the use of the French language was permitted (or not actively opposed) to an extent not sanctioned by the law of the Province as it now is; but it is not pretended that this right or *quasi* right or privilege or indulgence was secured to any class of persons by any law whatever of the then Province of Upper Canada at the Union."

8. The learned Counsel who represented the Attorney General for the Province thus referred to the evidence adduced in support of the claim put forth by the Defendant:

> "Every one of the cases referred to in Exhibit 64, relates to a Public School, every one of them. I do not know that there is a solitary case adduced in the exhibits in which a Separate School is expressly mentioned

except that one of 1871, to which I referred, and then the clergyman there was not speaking of a Separate School in a legal sense * * * My opinion is * * * that every case of concession to use the FRENCH language that has been produced in evidence relates to a Public School."

9. The claim advanced by the Defendant Board in the action referred to, is the claim of those of the French race in the City of Ottawa. A majority of the supporters of Separate Schools in the City of Ottawa is of that race and elects the majority of the members of the Separate School Board for the City.

10. During the years of 1912 and 1913 Regulations including Instructions Nos. 17 of 1912 and 1913, and No. 18 of 1912 were made and published by the Department of Education.

11. The attitude of the Board of Trustees of the Ottawa Separate Schools, (controlled as it was and now is, by members elected by the French race) with respect to these Regulations is too well known to require any extended reference. Suffice it to say that the Board refused to comply with or enforce the Regulations and refused to permit of the inspection of the so-called English-French schools by duly appointed Inspectors. The Honourable the Minister of Education for the Province thereupon deprived the Board of the annual grant in aid of education for the year 1913, notwithstanding that almost one-half of the schools are exclusively English schools, maintained up to a proper standard of efficiency and conducted in strict compliance with Departmental Regulations. Although no intimation has been received from the Department as regards the Government grant for 1914, it is probable the Board will also be deprived of the grant for the latter year.

12. In the month of April, 1914, the Board of Trustees whilst refusing to conduct the English-French schools according to law, and whilst maintaining its attitude of defiance of the Department of Education attempted to introduce and pass a By-law authorizing the issue of debentures to the amount of $275,000. The representatives of the English speaking ratepayers on the Board, in conjunction with other ratepayers, thereupon instituted proceedings in the Supreme Court of Ontario and claimed, with other relief; (*1*) an Injunction restraining the Board from further mortgaging or pledging the resources of Separate School ratepayers whilst continuing to conduct the English-French schools contrary to law, and (*2*) a Mandatory Injunction requiring the Defendant Board to conduct the schools according to law and Regulations of the Department of Education.

THE FOLLOWING IS A COPY OF THE JUDGMENT OF HIS LORDSHIP, MR. JUSTICE LENNOX IN THAT ACTION DELIVERED ON THE 28TH OF NOVEMBER, 1914.

There are only two classes of primary schools in Ontario Public and Separate Schools. "Public School" or "Separate School," simply imports an English School. For convenience the Department of Education annually designates certain schools attended by French-speaking pupils as English-French and these may be either Public or Separate Schools. The Defendants have under their charge 192 Roman Catholic Separate Schools, of which 116 are English-French.

The main issue to be determined in this action is the validity or invalidity of certain provisions of the School laws of Ontario, and particularly of Instructions or Regulations No. 17 of the Department of Education, issued in June, 1912, and August, 1913. I will deal with this issue first.

Under our Constitution, the power to make Educational laws, and the control of Education is for the most part committed to the Provinces. It is not an unfettered power or unlimited control. There is power vested in the Governor General in Council and the Dominion Parliament by which they may, if they will, prevent the effective exercise of the jurisdiction conferred upon the Provincial Legislatures. Sub-Sections 3 and 4 of section 93 of the British North America Act, 1867. But notwithstanding the strenuous argument of counsel for the defence these sub-sections in no way affect the issues in this case, for the manifest reason that the jurisdiction of the Dominion is supervisory or remedial only, and the powers conferred have not been exercised or even invoked; and

until invoked and acted upon they in no way impair or encroach upon Provincial jurisdiction. Neither on the other hand is the objection that notice has not been given to the Minister of Justice, well taken. There is no Act or action of the Dominion Government or Parliament attacked; no question arises as to conflicting jurisdiction. If the Ontario Legislature had not power to enact the laws complained of, the Dominion Parliament would be equally powerless so to enact.

The question to be determined and the only question is—to my mind a very simple one: Have the Constitutional rights and privileges guaranteed by sub-section 1 of Section 93 of the British North America Act, 1867, been contravened? If they have not there is an end to the Defendants' whole contention, there is no other possible argument open to them, if they have the law is *ultra vires* and nugatory; for no legislative body in Canada has power to make any law which "shall prejudicially affect any right and privilege with respect to Denominational Schools which any class of persons have (had) by Law in the Province at the Union." Sub-section 1 of Section 93, B.N.A.

The outstanding difference between this and the provisions of sub-sections 3 and 4 is manifest even on a casual reading of Section 93. This is a distinct and positive limitation upon legislative action, and subject to this, and to this limitation only—and in default of the exercise of Federal Jurisdiction the unfettered direction and control of Education within the Province is committed to the Legislation of Ontario.

This is the conclusion I come to upon a close and thoughtful reading of the relevant provisions of the British North America Act, and so far as I can judge, does not conflict with any thing dicided in Winnipeg v. Barrett, (1892) A.C. 445; Brophy v. Attorney-General of Manitoba (1895) A.C. 202; Mayher v. Town of Portland or any other of the cases referred to or of which I have knowledge, decided under the Act.

The defendants must justify under the limitations above quoted, if at all. Have they done this?

The Roman Catholic Separate Schools of Ottawa are undoubtedly "Denominational Schools" within the meaning of this limitation. I am of opinion too that the French-Canadian supporters of the Separate and Public Schools of Ontario are a "Class of Persons" within the meaning of that clause, and if they are not concluded by the Barrett case—and I am sure that they are—the defendants may I think fairly argue that denial of the use of the French language in the way insisted upon by the defendants prejudicially affects the French-Canadian supporters of these schools. But this, at the most is all that has been shown and this is not enough.

I have not overlooked that it was shown or attempted to be shown, by verbal testimony and records of the Department that prior to Confederation in isolated instances here and there, the use of the French language was permitted (or not actively opposed) to an extent not sanctioned by the law of the Province as it now is but it is not pretended that this right or *quasi* right, or privilege or indulgence was secured to any class of persons by any law whatever of the then Province of Upper Canada at the Union.

The result is that the defendants have wholly failed to show that Instruction or Regulation 17 of June, 1912 or of August, 1913 of the Department of Education for Ontario, or the manner in which these instructions have been or are being administered by the Department, prejudicially affect any right or privilege with respect to Denominational Schools which the Defendants as a class of persons had by law in the Province at the Union; and the result is; too that it does not appear that these instructions or the manner of their administration or the Statutes upon which they are founded are *ultra vires* of the Provincial Legislature. It follows, as a consequence of course, that they must be obeyed. That they have been flagrantly disregarded defiantly and ostentatiously repudiated and set at nought by a majority of the Ottawa Separate School Board is not and could not be denied. It would serve no useful purpose to particularize the evidence of this. It is for the Department, the law being declared, to see that the law is obeyed.

Without, however, attempting or desiring to make an exhaustive list of violations of the School Law it may conduce to clearness if I mention a few instances in which I find violations established by the evidence:

1. The use of French as a language of communication and instruction beyond Form 1 and as a subject of study for more than an hour a day in a class room without the consent of the Chief Inspector.
2. The employment of unqualified teachers.
3. Obstruction of the Inspectors in the discharge of their duties and preventing inspection of the schools.
4. Wilful failure to keep the schools open during the time prescribed by law, and in fact closing them and keeping them closed at and after the commencement of the School year 1914-15.
5. Wilfully omitting to properly equip and carry on the schools by the employment of qualified teachers and on the contrary dismissing from the schools twenty or more satisfactory competent and qualified teachers.

NOTE.—Want of means cannot be invoked as a justification. The Department specifically agrees to make an adequate supplementary grant to meet any difficulty in the case of English-French Schools. Paragraph 15 of Instruction 17, August, 1913. This was not applied for.

6. Defiant refusal to conduct the schools according to law or submit to the Regulations, and so forfeiting or suspending payment of their share of the Government grant; and by publication of their resolutions and declarations, fermenting discontent among the school supporters and encouraging the insubordination of the pupils.

The other issues to be dealt with are, in a sense, subordinate to the question just disposed of but not wholly so.

As to the passing of the money By-law and the disposal of debentures under it, the defendants urge the need of money, but have not shown any disposition to avail themselves of the suggestions I made at the trial to meet and overcome the suggested difficulties.

Leaving out of sight of course, minor derelictions, a Board should not be permitted to mortgage the resources of the ratepayers or launch out into heavy capital expenditures while refusing to conduct the schools according to law. However much may be said, and a great deal can be said in excuse for men who feel, as no doubt some of these defendants conscientiously felt, that the use of their mother tongue was being unfairly denied them, the weapons they used, the persistent engagement of unqualified teachers, their attempt to discharge a large body of qualified teachers, to the great prejudice of the schools, their denial of the right of inspection, their unjustifiable treatment of Inspector Summerby—for although they may not have directly initiated this flagrant act of insubordination, yet, that their openly declared hostility to the Regulations undoubtedly conduced to it, they they knew it was contemplated, that they did nothing to prevent it, and that they condoned and concurred in it, is the least that can be said—their unseemly, unnecessary and wholly unwarranted action in what amounted to "A Declaration of War," by posting their defiance of the Department in the class rooms to thousands of school children, and finally the arbitrary closing of the schools, are entirely different matters, and do not find ready justification or excuse. It is to be hoped that before long the Board may recognize the wisdom of resuming the exercise of its functions according to law; but in the meantime, or for so long as my judgment remains unreversed, the injunction restraining the passing of the By-law in question must be continued.

The injunction will also be continued and made perpetual to prevent the employment or payment of unqualified teachers or any departure from the course or method of instruction prescribed by the Department of Education and from, directly or indirectly, preventing the regular and lawful inspection of the schools.

I have already by an interim judgment declared that the Chairman of the Board has no power to discharge teachers as he purported to do, and that these teachers were not legally discharged. In this connection I gave liberty to the parties to amend the pleadings, and this has been done. I was asked at the trail, and it was urged again upon the argument to go further and declare that these teachers are entitled to be paid according

to the terms of their contracts respectively. This I cannot do. These men are not parties to this action. Their contracts are not before me. With their salaries I have no concern.

I re-affirm my former judgment, and declare that the resolutions under which the Chairman purported to act conferred upon him no right to dismiss or engage teachers. This is a function of the Board, and cannot be delegated. My former judgment, so far as it continues applicable, will be taken as repeated here.

In the pleading the Plaintiffs ask that the members of the Board who occasioned this action be made personally responsible for costs and any loss they have occasioned, with a reference to ascertain the amount, and though this branch of the claim was not referred to upon the argument I should consider it, and I have given it a good deal of anxious thought. There may be technical or legal objections, but altogether aside from this I am not disposed to make this somewhat unusual and drastic order. Other issues have grown out of them but at the beginning the controversy centered around two questions naturally regarded as transcendently important, language and religious faith; and in the attitude the majority assumed they had the support of a great many—and it may be a majority—of the ratepayers of the Separate Schools. Over zealous and injudicious councillors, too, were not wanting to spur them on to make extravagant demands. One gentleman whose position would argue wisdom and a moderation, unfortunately not in evidence, modestly writes: "As Priest of this Parish, I have charge of these families and their interests, *both national and religious*. The wish of the parents, as is my wish, is that French be taught in our schools to our children as heretofore. I protest against the unjust and outrageous appointment of Protestant Inspectors. If need be, it will be I myself who will cause the children to leave the school if the Inspector insists on wishing to make a visit." The italics are mine, the translation is as given and accepted at the trial.

The attachment of the French-Canadian people, including the French-speaking Trustees, to their mother tongue is easily understood, and is not to be ruthlessly condemned. That in all sincerity they should conceive it to be an imperative duty to guard what they regard as rights, I can well understand. The maintenance of our religious rights is admittedly of paramount importance to us all. The tense feeling inevitably engendered by the discussion of a dual language and its evil consequences, is unfortunately not a novel phase of our national development. I should be careful not to accentuate this unhappy strife. If the judgment I have just pronounced is right, the defendants had no just ground of complaint, and I have so declared. The tactics resorted to were unfortunate and illegal, and I have condemned them. They cannot be too severely condemned. But except in the matter of closing the schools and attempting to discharge the teachers it has not been shown that these trustees did not act honestly, conscientiously, and in good faith, and short of this I am not prepared to penalize them by declaring a personal liability for costs and damages. I will make no order under this prayer of the statement of claim. The Plaintiffs may withdraw it or have their rights, if any, reserved if they deem it necessary or desire to do so.

There will be judgment for the plaintiffs against the Defendant Board with costs, declaring:

1. That the Instructions or Regulations in the Pleading mentioned and the Acts and proceedings sanctioning them are *intra vires* of the Provincial Legislature, apply to and bind the defendants, and have been and are being disobeyed.

2. That the Defendants have not been and are not conducting the schools under their charge according to law.

3. That the Resolutions of the Defendant Board purporting to delegate the chairman power to discharge, select and engage teachers were *ultra vires*, that the notices to teachers in pursuance thereof were unwarranted and that the agreements with these teachers were not thereby terminated.

4. That it is a statutory duty of the Defendant Board to see that the schools under its charge are conducted according to the provisions of the Separate Schools Act and the Instructions and Regulations of the

Department of Education to maintain order and discipline in these schools and to permit and facilitate their inspection and the Defendant Board neglected and violated their statutory obligations in this regard.

And there will be judgment for:

5. An injunction in the terms, generally and to the purport and effect, of the Interim Injunction granted in this action by the Honourable the Chief Justice of the Kings Bench on the 29th day of April, 1914, and in addition restraining the Defendant Board from directly or indirectly obstructing or retaining in its employment or paying the salary of any teacher who shall so obstruct the Inspectors appointed by the Department from visiting and inspecting the schools in its charge, and ordering the Board to provide for and facilitate the orderly and efficient inspection of the schools from time to time according to law.

I will delay the endorsement of the Record for a week. There will be a stay of 30 days from that date. In the meantime, before endorsement, I may be spoken to by counsel as to any additional provision or formal alteration proper to be made.

13. Since the issue of the Writ in said action, (April 29th, 1914) the Board of Trustees so controlled by the Representatives of the French race, with the object of closing the English schools and thus coercing the English ratepayers, refused and neglected to pay the salaries of teachers engaged in purely English schools for the months of May and June, 1914, and on or about the 1st of July, 1914, introduced and passed the following Resolution.

RESOLVED.—That in the event of the INJUNCTION proceedings instituted by R. MacKell and others against this Board, and which are now pending, being maintained and Regulation N. 17 of the Department of Education being upheld and its enforcement insisted on, the Chairman of the Board, if in his discretion he should deem it proper and advisable in the interest of this Board so to do, be and he is authorized to dispense, as soon as he may deem advisable, with all or any of the lay teachers at present employed by the Board upon proper notice being given to such teachers, and that the Chairman be also authorized in the event of so dispensing with such lay teachers, to retain the services of such other teachers, as may be qualified to teach in the schools under the control of this Board in accordance with the requirements of the situation which may result from the maintenance of such Injunction proceedings and the upholding of such Regulation No. 17.

The Authority conferred herein on the Chairman shall be by him exercised at his discretion at such time or times as he may deem necessary in the interests of this Board notwithstanding anything to the contrary in the Rules and Regulations.

14. On or about the 1st of July, 1914, the said Chairman paid the salaries of the teachers in the English schools for the months of May and June and thereupon notified all the duly qualified lay teachers engaged in the English schools some forty-five in all, that their services were no longer required.

15. The Defendant Board subsequently neglected and refused to make any provision for the opening of the schools in the month of September, 1914, and neglected and refused to supply teachers, and refused to permit the duly qualified teachers who had been in charge in the month of June, 1914, to re-open the schools until compelled so to do by a Mandatory Order granted by His Lordship Mr. Juctice Lennox on the 11th of September, 1914. The following are the reasons of the learned Judge.

"The plaintiffs are a minority of the school board. It will be sufficiently accurate to say that this action is brought to compel the board, represented for the most part by Chairman Genest, to conduct the schools according to the Departmental regulations, to engage and employ a teaching staff composed exclusively of legally qualified persons, to prevent the payment of school moneys to unqualified teachers, and the sale or disposal of certain debentures.

The Court has so far recognized the Plaintiffs status, the importance of the issues raised, and the plaintiffs *prima facie* right to relief, by enjoining

the Defendants until the trial. The bulk of the evidence on both sides was put in on the 25th of June last, when an adjournment was asked for and obtained by the defendants to enable them to make further searches in the records of the Education Department, and, though strenuously opposed, the Injunction was continued. The adjournment was decidedly an indulgence to the defendants, as, so far as I am aware, no intimation of the application was given until the evidence for the defence was well advanced. The object of the action, the terms and aim of the Injunction, and the conditions necessarily implied upon an adjournment, should without more have been a sufficient guarantee that the efficiency of the schools would be preserved and the *status quo* honourably maintained pending the delay; but, had I known then that Mr. Genest contemplated what he has since consummated, namely, the turning out of the whole teaching staff, there would have been no adjournment without such additional guarantees as would have rendered the present disgraceful and disastrous conditions impossible.

Every Separate School in Ottawa is closed, 7,000 or 8,000 boys and girls are without the means of obtaining an education, and the vicious and perhaps criminal habits which some of them will inevitably acquire in a life of idleness will probably never be shaken off. The teachers were discharged, if they were discharged at all, by Mr. Genest. This was done pursuant to a resolution of the Board, opposed by the plaintiffs, purporting to delegate to him the entire question of the discharge and engagement of teachers. Mr. Genest is a keen, intelligent gentleman of excellent address, and in giving evidence argued the case from his standpoint with singular ability, but I failed to glean from his statements that he has actually a single teacher immediately available of the qualified class, and he frankly disclosed that one chief object of his action was to create a condition of things which would compel the Department to consent to the employment of some twenty-three Christian Brothers who are without professional qualifications.

I am asked to continue the injunction, and the injunction will be continued until I have given judgment in the action, and it will be continued with the addition that, if the plaintiffs desire it, it will be so amended as in words to apply to the servants, agents, employees, and representatives of the Defendants, as well as to the Defendants ,and, on the other hand, I reserve the right to the Defendants to apply for leave meantime to dispose of some of the debentures should an actual emergency arise.

I am asked, too, to make an interim order directing that the schools shall be opened forthwith and that the former teachers shall be restored to the positions they occupied in the schools prior to and at the end of the last half year. It is argued for the Defendants that for me to do this would be to usurp the functions and duties of the trustees. That, of course, I cannot do, however deplorable the conditions are now or however intolerable they are likely to become during the many months—probably years—that must elapse before the issues in this action are finally determined. There is no use in saying that it is easy; it is a difficult question to deal with. It was argued at great length that the remedy does not arise in the action and that the rules of precedure bar the way. Rules of procedure are for the convenience of litigants and the Court, and the advancement of justice and should not be invoked to perpetuate a wrong. If the relief asked is incidental to the action, I can grant it if it would be granted upon substantive motion. But the more important point is to draw the line correctly between the jurisdiction of the Court and the exclusive functions of the trustees. If amendments of the pleadings are necessary to meet the evidence and define the issues as they have developed and there is no answer of surprise the pleadings can be, and in this instance they may be amended.

As to the dividing line then? In matters relating to the schools under their control, the defendants are clothed with wide discretionary and *quasi*-judicial powers. Assembled at a properly constituted meeting of the Board, regularly conducted, dealing with matters within their jurisdiction and acting in the *bona fide* discharge of their duties and in harmony with the laws of the Province, the regulations of the department and any existing judgment or order of the Court affecting them, the conclusions

they reach, whether thought to be wise or unwise, cannot be interfered with by a Court. They are the Judges in such a case. The salaries they will pay, the engagement and discharge of teachers, and the selection or rejection of duly qualified teachers from time to time as these questions arise, but not in advance, are all matters within their jurisdiction.

But to shut out judicial actions where error or misdoing exists and a remedy is invoked, there must be the act of the Board as a Board, and not merely the act of its individual members, In all matters involving discretion or judgment, the whole question must be presented to the Board, should be weighed and considered by the Board, and must be determined upon by the Board.

What was done here was the act of Chairman Genest alone. The Board had not the power to delegate their duties or functions to him. They have not discharged the old teachers, and they have not entertained or deliberated or determined upon the selection or engagement of any teacher or teachers to take their place; and, speaking of the majority—for the plaintiffs are powerless—the Board, by their flagrant neglect to discharge the duties imposed upon them by law, have not only opened the way but have unintentionally invoked the action of the Court. More than this, not only was there no power to delegate, but the resolution purporting to appoint Mr. Genest was vicious and unlawful *per se*, for its exercise was intended, upon the face of it, to contravene and override the injunction order of the Court should it be issued. The omission of this provision from a subsequent resolution does not change the character of the act.

There is a palpable absence of good faith in the whole transaction; it is contrary to the spirit and intent of the injunction order; it is contrary to what was necessarily implied upon the adjournment and it has created; an intolerable state of things which I feel I have power to and ought to remedy. There will be an order directing the trustees to open the schools not later than Wednesday next, and to maintain and keep them open and properly equipped with properly qualified teachers and in all other ways until argument and judgment in this action; to suffer, permit, and facilitate the return of the ousted teachers to their former positions as teachers; and restraining the Board from interfering with or molesting these teachers in the discharge of their duties as such during the time aforesaid. The order will include the servants, agents, and employees of the defendants, and may contain provisions for notices being sent out by the secretary to the teachers concerned. If the parties cannot agree as to the terms of the order to be issued, I will settle them in the jury-room of the court-house (City Hall) in the City of Toronto on Monday next, the 14th instant, at 10 a.m., and I will then consider any argument addressed to me as to teachers said to have been engaged before the 5th day of this month. I shall also be prepared to hear argument as to whether the Board should be restrained from giving notice terminating the engagements pending the judgment, except upon leave of the Court.

16. The English schools under the jurisdiction of the Board having been opened pursuant to the order of His Lordship Mr. Justice Lennox, the Board refused to provide proper accommodation for the pupils attending such schools and refused and still refuses to pay the salaries of the teachers, caretakers wages, rent of class rooms and other expenses incident to the proper up-keep and maintenance of said schools.

17. Despite the efforts of the Board to close and keep closed the English schools the latter have, with the aid of the Court and the loyal cooperation of a staff of persecuted teachers been kept open, with the exception of an interval in the month of September, 1914. The accommodation afforded is, however, shamefully inadequate, and fuel has recently been declared contraband. If the Board is permitted to continue its present attitude with respect to English schools, the efficiency of these schools can no longer be manitained.

18. Since Confederation Laws have been enacted and Regulations passed establishing:

(*a*) Model schools for the training of teachers for English-French schools.

(*b*) A standard of training for teachers essentially differing from the standard required in schools exclusively English.

(*c*) A system of inspection for English-French schools different from that of exclusively English schools.

(*d*) Special text-books and a special curriculum of studies for use in English-French schools.

19. The attempt to conduct a system so constituted in conjunction with an English system of schools, under a common Board elected under the Separate Schools Act, has resulted in the present conflict. Instead of English-French schools as defined in the Regulations a system of French schools has been established; particularly is this true as regards the City of Ottawa where French schools are still being conducted in contempt of the Regulations and of the Injunction and Mandatory Order above quoted.

20. *Supporters of English Separate Schools rely upon the provisions of Section 93 above quoted and respectfully insist that the English character of these schools be preserved.*

21. *Ratepayers desirous of supporting an exclusively English system of schools should not be obliged to support or aid in supporting French schools or English-French schools as defined in the Regulations.*

2. If the Province desires that French or English-French schools should be recognized, provision apart from the Separate Schools Act should be made for them.

DATED this 12th day of January, A.D., 1915.

(Sgd.) JOHN J. O'MEARA,
Counsel for Committee of Supporters of English Separate Schools.

THE ENGLISH TRUSTEES' LETTER.

OTTAWA, ONT., February 20th, 1915.

THE HON. W. H. HEARST,
Premier of Ontario.

THE HON. R. A. PYNE,
Minister of Education.

SIRS:—The most important question that the Legislation of Ontario has to deal with this year is that of the Bilingual Schools.

At the last election the Government adopted as its platform the putting into force of Regulation 17. The people of Ontario will naturally expect the fulfillment of that pledge. The agitation against Regulation 17 is now without any other basis than the desire that Ontario, an English-speaking province, should *become* a Bilingual province, where English and French would have equal footing. That is the clearly defined and openly avowed policy of the opponents of Regulation 17. All the other arguments have collapsed. The combined effort of French-Canadian ecclesiastics, high and low, to make the agitation against Regulation 17 a religious one has been rejected as uncatholic by the English-speaking Catholics of Ontario. The claim that Regulation 17 infringed French Constitutional rights has been disposed of by Judge Lennox's decision in the Ottawa School Case. The attempt to show that Regulation 17 was against the natural law has likewise failed. The natural right of the French child to learn English in an English province and the natural right of the English children—Catholic and Protestant—in bilingual districts to have an efficient English education would necessitate the framing of some such Regulation as Regulation 17, were that Regulation not in existence. However the French, exploiting the universal horror caused by the German persecution of Belgium, now cry out loudly that they are being persecuted, that they are being oppressed, that they are "wounded," that the people of Ontario are worse than Prussians, etc. We protest against this outrageous calumny against the people of Ontario which is repeated week in and week out in almost every French paper in North America, and even at times in some across the Atlantic. An unprejudiced examination of the case reveals the fact that the people who are being persecuted in Ontario, if such a strong word is permissible, are the English-speaking people in French districts, and that the persecutors are the French Canadians of Ontario. The people in Prescott, Russell and New Ontario, who are suffering serious educational injustice are 19 times out of 20 English-speaking people,

whose rights are frequently utterly disregarded in schools controlled by the French. In the City of Ottawa the one aim of the French trustees and their backers, since the English trustees refused openly to join their illegal campaign against the Ontario Government, has been to wreck the English schools. Thus the English teaching staff was dismissed, the schools were locked in the children's faces in September, the necessary annexes were discarded, the teachers, when restored by order of Judge Lennox, were and are unpaid and a bold attempt was made to make every Separate School in Ottawa bilingual. A recent example of how the French are continuing this persecution is the fact that the caretaker of one of English School Annexes of Ottawa had in January, 1915 to apply to the Ottawa City Relief Committee for help because the French trustees refused to pay her her salary as caretaker. The enforcement of Regulation 17 is required to put an end to a persecution—of the English. All circumstances considered, it leaves ample room for instruction in French for French children who want it. If in some points it needs to be modified, then let that be done.

We expect then that the Ontario Government will take effective measures to provide efficient English education for every school child in Ontario. It was with that in view that it was elected.

In one respect, however, not so much in Regulation 17, but the manner in which it is enforced, should be modified. We refer to the appointment of Protestant inspectors of Separate Bilingual Schools. There is no reference to Protestant inspectors in Regulation 17, nor are they required by any other Regulation of the Department of Education. In fact their appointment was largely a matter of accident. We hold that instead of these Protestant Bilingual co-inspectors the Bilingual Separate Schools should be inspected by the regular Separate School inspectors. The English-speaking Catholics of Ottawa have a right to speak on this question. They have shown openly and repeatedly that the so-called religious agitation against these Protestant inspectors was merely a French agitation using the cloak of religion; that these inspectors had a Constitutional right to enter Separate Schools; that the reason why English-speaking Catholic inspectors were not appointed was because the French objected to them, and as a result those who were eligible for that appointment were not anxious to take it; that in no single instance did these Protestant inspectors interfere with religion. On the other hand we maintain, and this will be generally admitted, that the normal inspectors of Separate Schools are Catholic Separate School inspectors, and that the appointment of the Protestant Bilingual co-inspectors was justified only, because, for the moment, no others were available. As a matter of fact their appointment was bad politics. It gave the French an opportunity to start and wage an agressive anti-English agitation under the guise of religion. They have succeeded in preventing the entrance of English inspectors into their schools since the latter have been appointed. Indeed there are schools with a large number of purely English children which have never yet had an English inspector within their doors, much to the detriment of those children.

The complete Frenchification of Ontario is the programme of people of the type of those who constitute the French Canadian Educational Association of Ontario. The official organ of that Association—*Le Droit* of Ottawa—in its issue of 23 June, 1914, publishes with approval the following statement of one of its supporters: "I contemplate in the future a province of Ontario entirely French-Canadian." (J'entrevois dans l'avenir une province d'Ontario entièrement canadienne-française). We need not be surprised that an organ which stamps as "usurpers of French soil" (5 Dec., 1914) the Catholic and Protestant Glengarry Highlanders, who by their heroic loyalty during the Revolutionary War saved Upper Canada to the Empire, and who shoulder to shoulder with English, Irish and Scots of Prescott and Russell and the rest of Ontario saved Upper Canada, of which they were the first real settlers, once more at the cost of their life's blood in 1812,—we need not be surprised if that organ and the Association it represents should consider it their right to utilize the school system of Ontario to drive these Scot, English and Irish "usurpers" from Glengarry, Prescott and Russell.

Nor is this Frenchification of Ontario anything new. It has been carried on with success for over forty years. As early as 1874 county councils were permitted to appoint French inspectors, if there were forty French schools in

the county. In 1879 the French obtained from the Minister of Education authorization to use Quebec French school books in Ontario schools. Public attention was drawn in 1885 by one of the great political parties to the scandalous manner in which English was not taught in French schools, but the only result of the agitation was the creation of the first Ontario Bilingual model school (1886). Another attempt was made in 1890 to secure the efficient teaching of English in these schools and the Department of Education made several regulations. The schools however continued unchecked the Frenchification of Ontario, especially in Prescott and Russell. A sample of the manner in which the French schools taught English during all these years is afforded by the "Report of the Commission relating to the Ottawa Separate Schools 1895," of which the following are extracts; they refer to the boys' Schools:

"The Commissioners also found that the Regulations of the Education Department which, since 1891, have required teachers "to conduct every exercise and recitation from the text-books prescribed for Public Schools in the English language," and which also require that "all communications between the teacher and pupil in regard to matters of discipline and in the management of the school shall be in English, except so far as this is impracticable by reason of the pupil not understanding English" were not observed in the French Schools.

All subjects prescribed for study are taught in the French language, and French is almost entirely the language of these schools. The use of English had been confined in a large majority of the classes to the few minutes in the day given to the teaching of English.

In some cases this was necessary on account of the inability of the teacher to speak English, and in others the teachers knew so little English as to make it undesirable that they should undertake to teach in this language. In such cases as this a teacher who can speak English passes from room to room and devotes from 15 minutes to half an hour daily to teaching the English language in each room." (Page 30).

"From a consideration of all the facts and from a careful examination of the French Schools the Commissioners can come to no other conclusion than that there is no attempt worthy of the name made to teach English in the boys' Schools.

The teaching is largely giving to the pupil written forms, whose sounds when spoken by him convey no idea to his mind.

If the instructions of the Education Department with reference to the teaching of English were followed, and a teacher capable of teaching English employed for every class, the text-books for translation could be laid aside, and the pupils would learn more English in six months than many of them know now after having been at least four years at school." (Page 31).

The conditions found by that commission may be considered as typical. The Frenchification of Ontario was proceeding with a vengeance.* English

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*The following extract from an editorial of the *Catholic Record*, of February 27, 1915, aptly describes this 'French Conquest.'

"As in the great world-struggle now going on many Canadians do not realize that the existence of the British Empire is menaced; so in this so-called bilingual question many easy-going Ontario people, far removed from the bilingual zone, see nothing but local squabbles between French and Irish Catholics. They forget if they ever knew that the 'invasion and conquest' of the eastern counties of Ontario was carried on successfully through the Public not the Separate Schools; that the Commissions of 1889 and 1893 dealt exclusively with the Public Schools of Prescott and Russell; that in Northern Ontario the English-French schools are chiefly Public Schools, (the official list, 'Public and Separate schools and teachers in Ontario,' gives forty-eight English-French Public schools in Nipissing and Algoma); that though where there is 'an abundance of instruments' to carry out the National policy the trouble may become more acute in Separate Schools, it is not confined to them. The school is the weapon by which Protestants as well as Catholics and Catholics as well as Protestants are driven out of the 'invaded' territory and effectively kept out of the 'conquered' districts. No one can convince English speaking parents whether Protestant or Catholic who have had experience of such schools, (call them French, bilingual, or English-French or what you will) that they afford decent facilities for the education in English of their children. Hence they move out and give place to French-Canadians. * * * * * * * Protestants and Catholics alike were and are still being driven out with the strictest impartiality on the part of the 'peaceful invaders.' Those papers which profess to regard the bilingual difficulty as a Separate School affair are either wilfully dishonest or woefully incompetent to inform public opinion on a question one of whose obvious consequences is the practical shifting of the boundary line between Ontario and Quebec.

To forestall misrepresentation it may be as well to add that we should welcome French-Canadian immigration into the Province of Ontario if these immigrants instead of destroying the schools, so far as their usefulness to English-speaking people is concerned, would use them to acquire a working knowledge of the language of the province to which they come to better their condition."

pupils forced to attend these schools could not get an English education. Dr. Merchant's Report made no new discoveries. He simply found what the commissioners appointed before him had found.

A remedy for all this is certainly required. The remedy adopted by the Government was Regulation 17. But the enforcement of the regulation has been held up by the agitation against the Protestant inspectors. The French agitatiors could never have got their children to leave school upon the approach of the inspector, were the English inspector a Catholic, nor have they as a matter of fact done so where they are under the regular Separate School Inspector. Hence we request that the Protestant Bilingual co-inspectors be given charge of the Bilingual public schools, which are one third of the total number of Bilingual schools, and that every Separate School in Ontario be inspected by the regular Separate School Inspector. If it be found advisable that, for some Bilingual Separate Schools, the regular Separate School Inspector be assisted in his work by a Bilingual Inspector, the latter should be a Catholic and subordinate to the regular Separate School Inspector.

The people of Ontario cannot trust the efficiency of English education to the inspection of men who are the agents or allies of the French Canadian Education Association. Already great harm has been done by the fact that thousands of children, both English and French, in the Separate Schools have for years never been inspected by the regular Separate School Inspector. This evil should cease. We attach great importance to this inspection question. We are convinced that if the government accepts the proposals we have just made the ostentatious defiance of the Government Inspector will be at once rendered impossible, and the enforcement of an efficient English education rendered feasible.

As regards Ottawa the members of the Ontario Cabinet already have copies of the Petition prepared by our counsel last month. That able memorandum clearly shows that the English speaking Catholics of Ottawa have by the British North America Act a constitutional right to conduct English Separate Schools unhampered by bilingualism or Bilingual schools; that the present forced partnership of the English Separate Schools of Ottawa with a class of French or Bi-lingual schools is a violation of this constitutional right; and that a crowning proof of the injustice of this ingrafting of another school system upon the English Separate School system of Ottawa is the fact that when the Ontario Government by the withdrawal of the government grant fined the Ottawa Bilingual schools $2500 for an open defiance of the Regulations of the Department of Education, it at the same time fined the English Separate Schools of Ottawa a similar amount though they had nothing to do with the Bilingual regulation in question, nor with Bilingualism under any shape or form. More than this the French Bilingual trustees in their attempt to terrorize the English Separate School supporters into joining them in a defiance of the Government have openly proclaimed the fact that if Regulation 17 be enforced, they will turn every Separate School in Ottawa into a Bilingual school, (See Ottawa *Citizen*, May 5, 1914). The English Separate Schools, teachers and children are hostages delivered by the government into the hands of the Ottawa French insurrectionists. If the Government attempt to make the French obey the law, the French will increase their persecution of the hostages. The only remedy for this constitutional injustice is a complete separation of these Bilingual schools from the English Separate Schools. At a meeting held Nov. 5, 1913 at St. Patrick's Lyceum, the five English-speaking parish priests and the seven English Separate School Trustees who form the English Committee of the Separate School Board unanimously resolved "that separation of the Bilingual and Separate Schools proper under two independent boards with independent finance was the only remedy for Ottawa, and that means should be taken to obtain the necessary legislation." This resolution we hereby renew in our own name, and also, by their authority, in the name of the English-speaking parish priests of Ottawa. We do not ask it as a favor; we demand it as a constitutional right. It is also a natural right; we have a natural right to provide English schools for our children, to have the sole management under proper supervision of Church and State of these schools, and to be called upon to pay for no others. It is a demand which we cannot and will not abandon, as it is necessary if the Ottawa Separate School proper are to maintain their efficiency.

We are convinced that the Ontario Government is as anxious as we are to maintain the efficiency of the Ontario School system and that consequently it will grant the remedy we demand. If there be some who think that our demand—not for racial schools, not for a new system of schools, but most emphatically for a new type of School Board in Ottawa so that the Government School system in the City of Ottawa be maintained intact and efficient—that this demand can be pigeon-holed, they are mistaken. If there be some who think that a policy of faineance on the part of the Government, while French trustees are ruining English Separate Schools in Ottawa would be a good policy, as it would force English-speaking Catholics in Ottawa to the Public Schools and thus injure the Separate School system, we answer that were this to occur it would mean that the English Separate Schools of Ottawa which have been conducted since 1845 should now be handed over to the French and that the whole Separate School system in Canada's capital should become entirely French. However in addition we answer that the proposed or supposed complete exodus of the English speaking Catholics of Ottawa to the Public Schools will not occur. We obtained and perfected our Separate Schools in Ontario by a full half century of hard political agitation, and we are not going to throw away this inestimable heritage no matter how harrassing become the tactics of the French trustees. If, to make a very unlikely supposition, the Bilingual trustees of Ottawa are to be permitted to dismiss or starve out one English teaching staff, abolish our annexes and render inefficient the education imparted in our schools, we answer that a sufficient number of us shall stand by those schools and defend them till we shall have placed our case before the people of Ontario and won back our constitutional rights no matter at what cost. We trust that the Ontario Government realizes the gravity of the question at issue and the urgent need of immediate and effective action.

We desire now as always, but especially now in this calamitous time, when we are all called upon to stand shoulder to shoulder, peace and unity. But peace must be based on justice, and unity on freedom. When the Government has enforced Regulation 17 throughout the province, our French fellow citizens and friends will be themselves the first to admit that their fears were groundless, and that liberally interpreted and generously applied it is just to themselves, their children and to their neighbors. When the Ottawa Separate Schools proper and the Ottawa Bilingual Schools have been put under two mutually functionally and financially independent School Boards, the present forced and clumsy union which has produced half a century of quarrels, bickerings and administrative inefficiency, which has kept up racial animosities and suspicions, hampered educational progress, and disturbed civic peace will give way, under the aegis of liberty, to that mutual respect, business efficiency educational progress and civic and national peace so desired by us all.

We have the honor to subscribe ourselves,

Your obedient servants,

(Signed)

R. MACKELL,
J. F. LANIGAN,
HENRY F. SIMS,
A. J. BRENNAN,
JAMES FINN,
M. J. O'NEILL,

Members of the English Committee of the Board of Trustees of the Separate Schools of Ottawa.

Ottawa Seperat School Case; not access
Resume of the Question,
issued Apr. 1914.

DATE	NAME OF BORROWER
5 July 155	Franklin A. Walker